



Civil Resolution Tribunal

Date Issued: April 16, 2021

File: SC-2020-007659

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pant v. ICBC*, 2021 BCCRT 393

BETWEEN:

KISHORE PANT and APOORV PANT

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about insurance payments for motor vehicle damage. The applicant, Kishore Pant, says that an unidentified driver damaged his vehicle while it was parked. The other applicant, Apoorv Pant, is Kishore Pant's son, and he discovered

the vehicle damage. Kishore Pant made a hit and run damage claim to the respondent insurer, Insurance Corporation of British Columbia (ICBC).

2. ICBC accepted Kishore Pant's hit and run claim for damage on the vehicle's door, but it denied the hit and run claim for damage on the vehicle's front fender. ICBC says the front fender damage is inconsistent with vehicle to vehicle contact, which is required for a hit and run claim. ICBC says Kishore Pant can make a collision claim for the fender damage, but that ICBC will recover the repair costs from Apoorv Pant because it alleges he made a willfully false statement about the vehicle damage.
3. The applicants claim \$2,999, which is not broken down, but they say it is made up of car repair expenses, notary fees, and fees for this CRT dispute. Given that the applicants share the same last name and meaning no disrespect, I will use the parties' first names below, to avoid confusion.
4. The applicants are both represented by Kishore. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Further, bearing in

mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. The applicants submitted all of their evidence after the deadline for submitting evidence had expired. However, I find ICBC had the opportunity to review and respond to the applicants' late evidence in its submissions. So, I find there is no prejudice to ICBC in admitting the late evidence, and I have considered it in my decision.

ISSUE

10. The issue in this dispute is whether the damage to Kishore's car was caused by another vehicle.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. This dispute is about whether Kishore's vehicle damage should be covered under section 24 of the *Insurance Vehicle Act* (IVA). Section 24 describes remedies available for hit and run accidents. Applied to this dispute, section 24 allows Kishore to claim against ICBC if an unknown vehicle caused the damage to his car.

13. According to both Kishore and Apoorv, on March 20, 2020, Apoorv parked Kishore's vehicle on a side street in Burnaby at approximately 7:50 a.m. Kishore was a passenger when Apoorv parked the vehicle. Apoorv says when he returned to the vehicle at about 1:00 p.m., he discovered damage on the front driver's side fender, above the wheel well.
14. The photographs of Kishore's vehicle in evidence show a relatively shallow dent in the fender at about where the fender curves up toward the top of the vehicle's hood. Below the dent are several scratches and scuff marks that extend down to the wheel well.
15. Apoorv says when he discovered the damage, he called ICBC and the employee he spoke with told him to check for vehicle debris and any security cameras in the area. He did not make a claim at that time, so there are no ICBC notes about this conversation. Apoorv says he knocked on the door of a nearby residence that had a camera, but the resident told him the camera was not working. The evidence shows that Apoorv also contacted his father Kishore, and they exchanged text messages about the damage and making a claim.
16. The next day, Kishore reported a hit and run claim to ICBC about the fender damage. On March 31, 2020, Kishore took his vehicle to a body shop for an estimate. He says the body shop also identified a dent in the front driver's side door that he had not seen before. So, Kishore called ICBC to add the door damage to his hit and run claim.
17. The evidence shows that on April 1, 2020, an ICBC estimator reviewed Kishore's claim and concluded the fender damage did not look related to the door damage. The estimator also concluded that the fender damage did not appear vehicle related. ICBC asked Kishore and Apoorv to provide statements and an application requesting payment for hit and run damage, which included a statutory declaration attesting to the truth of the claim.
18. Ultimately, ICBC approved the damage to the driver's door as caused by a hit and run. ICBC says the door damage is consistent with a "door ding" from being parked

next to another car that opened its door into Kishore's door. ICBC says the fender damage is unrelated to the door ding and does not qualify for hit and run coverage.

19. ICBC provided internal notes from 2 employees other than the initial estimator. They both give the same opinion that the fender damage is inconsistent with vehicle to vehicle damage because the damage shows "directional change". One suggested the damage is consistent with impacting a "stationary vertical object". There is no explanation of who these employees are other than their names, although one is indicated to be a "manager". I find that under the CRT's rules I cannot rely on these opinions as expert evidence about what caused the damage because I do not know their qualifications.
20. I have summarized above the extent of the evidence from the parties about what might have caused the damage to Kishore's vehicle. The burden is not on ICBC to prove what caused the damage. As the sole registered owner of the vehicle in this dispute, the burden is on Kishore to prove that the fender damage was likely caused by another vehicle in a hit and run.
21. The text messages between Apoorv and Kishore show that Apoorv's friend speculated the damage could have been caused by another vehicle attempting a 3-point turn and hit Kishore's vehicle in the process. I find this speculation is insufficient to conclude that another vehicle caused the fender damage. I find it is just as likely that the damage was caused by some other object passing by Kishore's car.
22. Under the circumstances, I find that expert evidence is required to determine whether the fender damage was caused by another vehicle, as I cannot determine that from my own review of the photographs in evidence. Here, there is no expert evidence.
23. I note that I have no reason not to accept Apoorv's statement that the vehicle's fender was undamaged when he parked the vehicle in the morning, and that he discovered the damage when he returned to the vehicle in the afternoon. I infer that ICBC's allegation that Apoorv made a willfully false statement is based on Apoorv being the vehicle's last driver, and the ICBC manager's note that the contact causing the fender

damage “would have been felt”. However, I find the evidence, particularly the text message chain between Apoorv and Kishore, is consistent with Apoorv discovering the damage when he returned to the parked vehicle. Nevertheless, that does not mean the damage was caused by another vehicle, which is a requirement for section 24 IVA coverage.

24. I find the applicants have failed to meet their burden of proving the fender damage was caused by another vehicle. I dismiss the applicants’ claim.

25. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the applicants were unsuccessful, I dismiss their claim for CRT fees. ICBC did not pay any fees or claim any dispute-related expenses.

ORDER

26. I dismiss the applicants’ claims and this dispute.

Kristin Gardner, Tribunal Member